

JAMSEY BELLE §
v. § CIVIL ACTION NO. 6:08cv362
TYLER POLICE DEPARTMENT, ET AL. §

After reviewing the pleadings in the case, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice as frivolous, with refiling conditioned upon Belle's showing that his conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding, or called into question through the issuance of a federal writ of habeas corpus. Heck v. Humphrey, 114 S.Ct. 2364, 2372 (1994). The Magistrate Judge further recommended that this dismissal of the lawsuit have no effect upon Belle's right to challenge his conviction through any lawful means, including but not limited to a state habeas corpus application under Article 11.07 of the Texas Code of Criminal Procedure or a federal habeas corpus application under 28 U.S.C. §2254.

Belle filed a response to the Magistrate Judge's Report on October 6, 2008. In this response, he says that he has no objection to a dismissal of his lawsuit and that he brought the lawsuit in good faith. He states that he should have had an opportunity to view the videotape before trial. He also asks that the Court "suspend" his lawsuit while he pursues the challenge to his conviction.

A suspension of the lawsuit is unnecessary because the statute of limitations will not begin to run until the Heck pre-conditions are met. Stephenson v. Reno, 28 F.3d 26, 27-28 (5th Cir.1994). The recommendation made by the Magistrate Judge is correct.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original complaint, the Report of the Magistrate Judge, and the Plaintiff's response thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that to the extent that Belle's response objects to this Report, such objections are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil rights action be and hereby is DISMISSED without prejudice, with the refiling thereof conditioned upon a showing that the Plaintiff's conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding, or

called into question through the issuance of a federal writ of habeas corpus. The dismissal of this lawsuit shall have no effect upon Belle's right to challenge his conviction through any lawful means, including but not limited to a state habeas corpus application under Article 11.07 of the Texas Code of Criminal Procedure or a federal habeas corpus application under 28 U.S.C. §2254; however, Belle is reminded that he cannot seek federal habeas corpus relief until his state remedies have been exhausted. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 28th day of October, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**